

FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

BRIAN A. STARK, D.D.S.,
RESPONDENT.

FINAL DECISION AND ORDER

LS 9807082 DEN

Division of Enforcement
96 DEN 116

The parties to this proceeding for purposes of sec. 227.53, Stats., are:

Brian A. Stark, D.D.S.
N84W15959 Appleton Ave.
Menomonee Falls, WI 53051

Wisconsin Dentistry Examining Board
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation And Licensing
Division of Enforcement
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

The Wisconsin Dentistry Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Brian A. Stark, D.D.S., personally, and by his attorney, W. Patrick Sullivan, and by Gilbert C. Lubcke, attorney for the Department of Regulation And Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Dentistry Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Brian A. Stark, D.D.S., N84W15959 Appleton Avenue, Menomonee Falls, Wisconsin, 53051, was born on 6/7/50 and has been licensed to practice dentistry in the state of Wisconsin since 6/20/75, license #1496.

2. Dr. Stark provided regular dental examinations and dental care for the patient, J.G., from 12/6/79 through 2/17/93. Over this period of time, the patient developed periodontal disease which Dr. Stark failed to diagnose and treat. The patient experienced excessive bone loss in the maxillary arch as a result of the progression of the periodontal disease.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction in this proceeding pursuant to sec. 447.07, Stats.
2. The Wisconsin Dentistry Examining Board has the authority to resolve this proceeding by stipulation without an evidentiary hearing pursuant to sec. 227.44(5), Stats.
3. Dr. Stark's conduct as set forth in the Findings of Fact was conduct which substantially departed from the standard of care ordinarily exercised by a dentist and which created an unacceptable risk of harm to the patient contrary to sec. 447.07(3)(a), Stats., and Wis. Admin. Code sec. DE 5.02(5).
4. The Wisconsin Dentistry Examining Board has the authority pursuant to sec. 440.22, Stats., to assess the costs of this proceeding against Dr. Stark.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED that Brian A. Stark, D.D.S., license #1496, is REPRIMANDED.

IT IS FURTHER ORDERED that Brian A. Stark, D.D.S. will participate in and satisfactorily complete an educational program in dental recordkeeping and in the diagnosis and treatment of periodontal disease. The educational program will be developed and administered by the Marquette University School of Dentistry. The educational program will consist of the following components:

- a. Assessment. Dr. Stark will participate in an initial assessment of his skills and knowledge in the areas of dental recordkeeping and the diagnosis and treatment of periodontal disease conducted by the Marquette University School of Dentistry. The purpose of this assessment is to assist in the development of the educational component of the program. To assist the Marquette University School of Dentistry in performing this assessment, Dr. Stark will provide a random selection of his patients' records in conformity with selection criteria as the Marquette University School of Dentistry will determine. The assessment will be completed within 60 days of the date of this Final Decision And Order. If as a result of this assessment, the Marquette University School of Dentistry determines that Dr. Stark does not have any area of

deficiency in dental recordkeeping or in the diagnosis and treatment of periodontal disease which warrants the development of an educational program as described in subparagraph b of this Final Decision And Order, the Marquette University School of Dentistry will advise the Wisconsin Dentistry Examining Board in writing of its determination and provide documentation from the assessment in support of its determination. If the Wisconsin Dentistry Examining Board accepts this determination, the Wisconsin Dentistry Examining Board may order that no additional educational program will be required to comply with the terms of this Final Decision And Order. If the Wisconsin Dentistry Examining Board does not accept this determination, the Wisconsin Dentistry Examining Board will confer with the Marquette University School of Dentistry to develop an educational program satisfactory to the Wisconsin Dentistry Examining Board.

- b. Academic and Clinical Program. The Marquette University School of Dentistry will develop an educational program in dental recordkeeping and in the diagnosis and treatment of periodontal disease which may consist of an academic component or a clinical component or both. The Marquette University School of Dentistry will develop this educational program within 60 days of completion of the assessment. The educational program will be submitted to the Wisconsin Dentistry Examining Board for approval. Dr. Stark will commence the educational program within 60 days of the date on which the Wisconsin Dentistry Examining Board gives notice to Dr. Stark and the Marquette University School of Dentistry of its approval of the educational program. Dr. Stark will complete the academic and clinical components of the educational program in accordance with the timetable established by the Marquette University School of Dentistry, but under no circumstances will the date for completion of the educational program extend beyond one year from the date of this Final Decision And Order.
- c. Evaluation. Dr. Stark will take and pass oral or written evaluations administered by the Marquette University School of Dentistry over the course of the educational program and at the conclusion of the educational program to assess his knowledge of dental recordkeeping and the diagnosis and treatment of periodontal disease.
- d. Certification. At the conclusion of the educational program and the oral and written evaluations, if Dr. Stark has satisfactorily completed the educational program and taken and passed the oral and written evaluations, the Marquette University School of Dentistry will certify satisfactory completion of the educational program to the Wisconsin Dentistry Examining Board.

IT IS FURTHER ORDERED that Brian A. Stark, D.D.S., will be responsible for the full costs of the assessment, the educational program and the evaluations and will make payment to the Marquette University School of Dentistry in accordance with the payment schedule established by the Marquette University School of Dentistry.


IT IS FURTHER ORDER that if the Marquette University School of Dentistry is unable to develop an educational program for Brian A. Stark, D.D.S., the Marquette University School of Dentistry will so notify the Wisconsin Dentistry Examining Board and this matter will be returned to the Division of Enforcement for further proceedings.

IT IS FURTHER ORDERED that Brian A. Stark, D.D.S., will pay the costs of this proceeding in the amount of \$150.00 to the Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin, 53708-8935 within 30 days of the date of this Final Decision And Order.

The rights of a party aggrieved by this Final Decision And Order to petition the Wisconsin Medical Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin, this 8th day of July, 1998.

WISCONSIN DENTISTRY EXAMINING BOARD


Member, Wisconsin Dentistry Examining Board

IASTARKLEGAL\FD&O0526.DOC

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
BRIAN A. STARK, D.D.S.,	:	
RESPONDENT.	:	

Division of Enforcement
96 DEN 116

It is hereby stipulated between Brian A. Stark, D.D.S., personally, and by his attorney, W. Patrick Sullivan, and Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Brian A. Stark, D.D.S., N84W15959 Appleton Avenue, Menomonee Falls, Wisconsin 53051, was born on 6/7/50 and has been licensed to practice dentistry in the state of Wisconsin since 6/20/75, license #1496.

2. An investigation of Dr. Stark is pending before the Wisconsin Dentistry Examining Board, investigative file 96 DEN 116. This Stipulation fully resolves all of the allegations arising out of investigative file 96 DEN 116.


3. The parties to this Stipulation agree that the Wisconsin Dentistry Examining Board may render the Final Decision And Order attached hereto, the terms of which have been agreed upon by the parties.

4. Dr. Stark understands that by signing this Stipulation, he freely, voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, the right to confront and cross-examine witnesses against him, the right to call witnesses on his behalf and to compel their attendance by subpoena, the right to testify on his own behalf, the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the Final Decision and Order, the right to petition for rehearing, the right to judicial review, and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

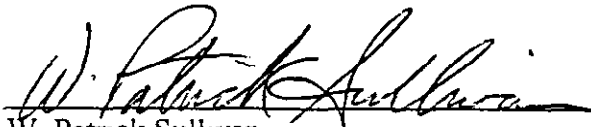
5. The parties to this Stipulation and the Case Advisor, Cynthia M. Riffle, D.D.S., may appear before the Wisconsin Dentistry Examining Board in support of this Stipulation. Any appearance by either party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.

6. If any term of this Stipulation or the incorporated Final Decision And Order is not accepted by the Dentistry Examining Board, then no term of this Stipulation or the Final Decision And Order will be binding in any manner on any party, and the matter will be returned to the Division of Enforcement for further proceedings.

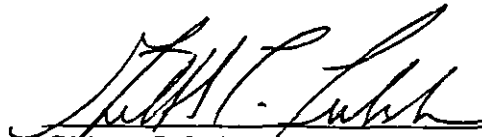
Dated: 6-1-98


Brian A. Stark, D.D.S.

Dated: 6/2/98


W. Patrick Sullivan
Attorney for Brian A. Stark, D.D.S.

Dated: 6/4/98


Gilbert C. Lubcke
Attorney for the Department of Regulation and
Licensing, Division of Enforcement

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On July 8, 1998, the Dentistry Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$150.00 Case #: LS9807082DEN

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$150.00

The costs and/or forfeitures are due: August 7, 1998

NAME: Brian A. Stark LICENSE NUMBER: 1496

STREET ADDRESS: N84W15959 Appleton Avenue

CITY: Menomonee Falls STATE: WI ZIP CODE: 53051

Check whether the payment is for costs or for a forfeiture or both:

X COSTS FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Brian A. Stark, D.D.S.,

AFFIDAVIT OF MAILING

Respondent.


STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On July 10, 1998, I served the Final Decision and Order dated July 8, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9807082DEN, upon the Respondent Brian A. Stark's attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 540.


W. Patrick Sullivan, Attorney
700 N. Water Street
Milwaukee WI 53202-4278



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 10th day of July, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: W PATRICK SULLIVAN ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 7/10/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935